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BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 1D 2000 62689
JACK LOW, R.P.T. 3100 Telegraph Avenue, Suite 100 Oakland, CA 94609	**FIRST AMENDED** **A C C U S A T I O N**
License No. PT 2036	
Respondent.	

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about April 18, 1969, the Physical Therapy Board of California issued License Number PT 2036 to Jack Low, R.P.T. (Respondent). The License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2003, unless renewed.

JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of

California (Board), under the authority of the following sections of the Business and Professions Code (Code).

4. Section 2609 of the Code states:

"The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter."

5. Section 810 of the Code states, in pertinent part:

"(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

. . . (2) Knowingly prepare, make or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a healthcare professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code."

6. Section 2660 of the Code states, in pertinent part:

"The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:

. . . (l) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist."

7. Penal Code section 550(a)(7) provides that no person shall knowingly

submit a claim for a health care benefit that was not used by, or on behalf of, the claimant.

8. Section 2661.5 of the Code states, in pertinent part:

"(a) In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case."

FIRST CAUSE FOR DISCIPLINARY ACTION

(False or Fraudulent Claim)

9. Respondent is subject to disciplinary action under Sections 810(a)(2) and 2660 of the Code in that respondent prepared, made and/or subscribed writings in support of a false or fraudulent claim. The circumstances are as follows:

(A) In 1997, Patient E.M.[1] was a patient under respondent=s care at respondent=s physical therapy offices in Oakland, California. Patient E.M. was a U.S. Post Office employee and the physical therapy services provided by respondent were directed to treatment of work-related musculo-skeletal complaints. For the purpose of obtaining payment from the federal worker=s compensation fund, respondent submitted certain Health Insurance Claim Forms. Each form set forth the date of the procedure, the billing code for each procedure and the amount of payment claimed. Each form was signed by respondent.

(B) E.M. was hospitalized at Summit Hospital in Oakland, California on the following dates: September 26, 1997 to October 9, 1997; December 31, 1997 to January 2, 1998; February 4, 1998 to February 9, 1998. During these periods,

1. The identity of patients is abbreviated to protect privacy. Full disclosure of charged patients will be made in response to a discovery request.

E.M. was receiving dialysis and medical treatment. The patient was not receiving physical therapy and, moreover, was physically unable to go to respondent=s offices.

(C) Respondent billed the Office of Workers= Compensation Program (OWCP) for allegedly providing physical therapy to E.M. while E.M. was hospitalized.

(D) On September 30, 1997, respondent subscribed a Health Insurance Claim Form for physical therapy services alleged to have been provided to E.M. by him on September 26, 1997. Respondent used insurance billing codes, which denote physical therapy procedures, to indicate that he had performed those procedures on the dates indicated. For each procedure respondent requested payment, with the price ranging from $18.45 to $33.21 per procedure.

(E) On September 30, 1997, respondent subscribed a Health Insurance Claim Form for physical therapy services alleged to have been provided to E.M. by him on September 29, 1997. Respondent used insurance billing codes, which denote physical therapy procedures, to indicate that he had performed those procedures on the dates indicated. For each procedure respondent requested payment, with the price ranging from $18.45 to $33.21 per procedure.

(F) On December 31, 1997, respondent subscribed a Health Insurance Claim Form for physical therapy services alleged to have been provided to E.M. by him on December 31, 1997. Respondent used insurance billing codes, which denote physical therapy procedures, to indicate that he had performed those procedures on the dates indicated. For each procedure respondent requested payment, with the price ranging from $18.45 to $33.21 per procedure.

(G) On February 27, 1998, respondent subscribed a Health Insurance Claim Form for physical therapy services alleged to have been provided to E.M. by him

on February 4, 1998. Respondent used insurance billing codes, which denote physical therapy procedures, to indicate that he had performed those procedures on the dates indicated. For each procedure respondent requested payment, with the price ranging from $18.45 to $33.21 per procedure.

(H) On February 27, 1998, respondent subscribed a Health Insurance Claim Form for physical therapy services alleged to have been provided to E.M. by him on February 6, 1998. Respondent used insurance billing codes, which denote physical therapy procedures, to indicate that he had performed those procedures on the dates indicated. For each procedure respondent requested payment, with the price ranging from $18.45 to $33.21 per procedure.

(I) On February 27, 1998, respondent subscribed a Health Insurance Claim Form for physical therapy services alleged to have been provided to E.M. by him on February 9, 1998. Respondent used insurance billing codes, which denote physical therapy procedures, to indicate that he had performed those procedures on the dates indicated. For each procedure respondent requested payment, with the price ranging from $18.45 to $33.21 per procedure.

(J) Respondent was paid a total of $538.35 for the above-listed dates he allegedly provided service.

(K) On May 6, 1998, Patient E.M. died as a consequence of a subdural hematoma and end stage renal failure.

(L) On June 1, 1998, respondent subscribed a Health Insurance Claim Form for physical therapy services alleged to have been provided to E.M. by him from May 8, 1998 through May 29, 1998. Respondent used insurance billing codes, which denote physical therapy procedures, to indicate that he had performed those procedures on the dates indicated. For each procedure respondent requested payment, with the price ranging from $18.45 to $33.21 per procedure.

(M) On July 6, 1998, respondent subscribed a Health Insurance Claim Form for physical therapy services alleged to have been provided from June 1, 1998 through June 30, 1998. Respondent used billing codes, which denote physical therapy procedures, to indicate that he had performed those procedures on the dates indicated. For each procedure respondent requested payment, with the price ranging from $18.45 to $33.21 per procedure.

(N) The aforementioned claims were false and fraudulent in that respondent had neither provided the services described in the claims while respondent was hospitalized at Summit Medical Center, nor had respondent provided any services at all to the deceased patient E.M. on the dates indicated.

(O) On the basis of the claim subscribed and submitted by respondent, and as respondent intended by submitting the claim, the U.S. Department of Labor paid benefits to respondent for health care services which he did not perform.

10. Respondent is subject to disciplinary action pursuant to Business and Professions Code sections 810(a)(2) and 2660 in that respondent has engaged in unprofessional conduct in that he prepared, made and/or subscribed writings in support of a false or fraudulent claim for benefits when respondent had not in truth performed any professional services.

SECOND CAUSE FOR DISCIPLINARY ACTION

(False or Fraudulent Claim)

11. Respondent is subject to disciplinary action under Sections 810(b) and 2660 of the Code in that respondent knowingly submitted a claim for a health care benefit that was not used by the patient. The circumstances are as follows:

A. Complainant incorporates Paragraphs 9(A)-9(O) above as though fully set forth in this, the second, cause for disciplinary action.

B. Respondent knew that E.M. had not received the health care benefit (i.e., physical therapy treatment) for which payment was claimed. Based upon the

claims submitted by respondent, the U.S. Department of Labor paid for treatment of work-related injuries which was never performed.

C. Pursuant to a federal and state investigation of respondent=s billing practices, an undercover agent using the name AShemy Tucson@ went to respondent=s offices for treatment on the following dates in 1999: October 18, 20 and November 8 and 10. The agent did not go to respondent=s offices on October 22 or November 12, nor did she receive physical therapy from the respondent on those dates. Nevertheless, respondent presented a claim for payment to the federal worker=s compensation fund. The claim subscribed by respondent included insurance billing codes for physical therapy procedures which respondent knew had not been performed.

D. Pursuant to a federal and state investigation of respondent=s billing practices, an undercover agent using the name AHelen Kim@ went to respondent=s offices for treatment on the following dates in 2000: February 25, March 1, March 8. The agent did not go to respondent=s offices on February 28, March 3, March 6, March 10, March 13 or March 15. Nevertheless, respondent presented a claim for payment to the federal worker=s compensation fund for services purportedly provided on those dates. The claim subscribed by respondent included insurance billing codes for physical therapy procedures, despite the fact that respondent knew he had not provided those services.

12. Respondent is subject to disciplinary action under Sections 810(b) and 2660 of the Code in that respondent engaged in conduct which is prohibited by Penal Code section 550(7), to wit: He knowingly submitted a claim for a health care benefit that was not used by the patient.

THIRD CAUSE FOR DISCIPLINARY ACTION

(Fraudulent, Dishonest or Corrupt Act)

13. Respondent is subject to disciplinary action under Section 2660(l) of the Code in that respondent engaged in fraudulent, dishonest or corrupt acts. The circumstances are as follows:

A. Pursuant to a federal and state investigation of respondent=s billing practices, an undercover agent using the name AShemy Tucson@ went to respondent=s offices for treatment on the following dates in 1999: October 18, 20 and November 8 and 10. The agent did not go to respondent=s offices on October 22 or November 12, nor did she receive physical therapy from the respondent on those dates. Nevertheless, respondent presented a claim for payment to the federal worker=s compensation fund for services purportedly provided on those dates. The claim subscribed by respondent included insurance billing codes for physical therapy procedures, despite the fact that respondent knew that no such procedures were performed on those dates.

B. Pursuant to a federal and state investigation of respondent=s billing practices, an undercover agent using the name AHelen Kim@ went to respondent=s offices for treatment on the following dates in 2000: February 25, March 1, March 8. The agent did not go to respondent=s offices on February 28, March 3, March 6, March 10, March 13 or March 15. Nevertheless, respondent presented a claim for payment to the federal worker=s compensation fund for services purportedly provided on those dates. The claim subscribed by respondent included insurance billing codes for physical therapy procedures, despite the fact that respondent knew that no such procedures were performed on those dates.

C. Respondent knowingly engaged in a practice of billing health benefit payers for canceled appointments. On such bills, respondent would not indicate that the appointment was missed or canceled, but instead used the same service

codes as would indicate that physical therapy services were provided. The agent known as Helen Kim canceled appointments scheduled for February 28, March 3 and March 6. She did not keep a March 10 appointment. The federal worker=s compensation fund was billed by respondent as if physical therapy services were provided on those dates.

14. Respondent is subject to disciplinary action under Section 2660(l) of the

15. Code in that respondent engaged in conduct which was fraudulent, dishonest and/or corrupt in that respondent obtained payment for physical therapy services which were not provided by presenting misleading and untrue claims. Respondent=s deceptive billing practices are substantially related to the qualifications, functions, or duties of a physical therapist.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking or suspending License Number PT 2036, issued to Jack Low, R.P.T.;

2. Ordering Jack Low, R.P.T. to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5;

3. Taking such other and further action as deemed necessary and proper.

DATE: June 2, 2003

Original Signed By:
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant

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